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Attorneys for Plaintiff
AIU INSURANCE COMPANY

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

AIU INSURANCE COMPANY, a New
York corporation,

Plaintiff,

vs.

ACCEPTANCE INSURANCE COMPANY,
a Delaware corporation, TIG SPECIALTY
INSURANCE COMPANY, a California
corporation, ARROWOOD INDEMNITY
COMPANY, FORMERLY KNOWN AS
ROYAL INDEMNITY COMPANY,
SUCCESSOR-IN-INTEREST TO ROYAL
INSURANCE COMPANY OF AMERICA,
a Delaware corporation, AMERICAN
SAFETY RISK RETENTION GROUP,
INC., a Vermont corporation, AMERICAN
SAFETY INDEMNITY COMPANY, a
Oklahoma corporation, and DOES 1 through
10, inclusive,

Defendants.

CASE NO. C 07-5491 PJH

**JOINT SUPPLEMENTAL CASE
MANAGEMENT STATEMENT**

CMC: August 21, 2008
Courtroom: 3, 17th Floor
Time: 2:30 p.m.
Judge: Hon. Phyllis J. Hamilton

JOINT SUPPLEMENTAL CASE CONFERENCE STATEMENT

The parties to the above entitled action, plaintiff and counter-claim defendant AIU Insurance Company ("AIU" or "plaintiff"), defendant and cross/counter-claimant Arrowood

Indemnity Company, formerly known as Royal Indemnity Company, successor in interest to Royal Insurance Company of America ("Arrowood"), and defendants and cross-defendants Acceptance Insurance Company ("Acceptance"), TIG Insurance Company ("TIG"), American Safety Risk Retention Group, Inc. ("ASRRG"), and American Safety Indemnity Company ("ASIC") (collectively "defendants") jointly submit this Supplemental Case Management Statement.

(1) Summary of Facts

This action presents issues regarding allocation and priority as between primary and excess general liability insurance policies issued to Rylock Company, Ltd. ("Rylock"), a window manufacturer, as respects past and currently ongoing construction defect actions.

Rylock's insurance coverage is fully described in pleadings and papers on file with the Court in this matter. For the Court's ease of reference, Rylock's pertinent insurance coverage is summarized as follows:

Policy Period	Primary Coverage	Excess Coverage
3/1/92-3/1/93	Acceptance Policy No. C92CG0053	Westchester (To be confirmed)
3/1/93-3/1/94	Acceptance Policy No. C93G0194	Westchester (To be confirmed)
3/1/94-3/1/95	Acceptance Policy No. C94G0370	Westchester (To be confirmed)
3/1/95-3/1/96	TIG Policy No. 3135280	TIG XLB 926 17 29
3/1/96-3/1/97	Arrowood (formerly Royal) Policy No. PTY441053	AIU Insurance Company Policy No. 309-29-74
3/1/97-3/1/98	Arrowood (formerly Royal) Policy No. PTS443208	
3/1/98-3/1/99	Arrowood (formerly Royal) Policy No. PTR457882	AIU Insurance Company Policy No. 357-20-18
3/1/99-3/1/00	Arrowood (formerly Royal) Policy No. PTR457882	
3/1/00-3/1/01	ASRRG Policy No. XGI 00-1462-001	
3/1/01-3/1/02	ASIC Policy No. XGI 00-1462-002	

Arrowood contends that all of its primary policies, denoted by the shaded areas in the table above, are exhausted. Such alleged exhaustion raises the issues to be addressed by this action.

(2) Status Following Prior Case Management Conference

(a) Subsequent Pleadings

On June 20, 2008, AIU filed an Amended Complaint.

On July 11, 2008, Arrowood filed a Counterclaim/Cross-Complaint in conjunction with its Answer and Affirmative Defenses to the First Amended Complaint. In its Counterclaim/Cross-Complaint, Arrowood seeks a declaration that its policies are exhausted and reimbursement of amounts paid in defense fees and costs incurred post-exhaustion.

(b) Status of Document Exchange

As detailed in the initial case management conference statement and discussed at length at the prior case management conference, the present claim presents complications pertaining to document production. Particularly, there are hundreds of underlying claims. While certain issues are amenable to resolution by motion based strictly upon policy language, other issues raised by this matter mandate review of voluminous claim file documentation.

To date, the parties have not completed the production and review of such voluminous claim file documentation.¹ ASRRG and ASIC produced copies of all claim file documents on August 6, 2008. Arrowood has produced seven boxes of Rylock claim file documents, a portion of Arrowood's claim materials, for review by all the parties in Los Angeles. TIG and Acceptance reviewed the documents, AIU obtained a complete copy of the records. ASSRG and ASIC advised counsel for Arrowood that it had decided not to attend Arrowood's production of these documents and did not do so. Arrowood continues to make its best efforts to produce Rylock claim file documents located in North Carolina. TIG has informed everyone that the approximately 20 boxes of documents are ready for review in New Hampshire. Aside from AIU, no party has shown any interest in reviewing TIG's documents. AIU maintains that the documents should have been produced in conjunction with the parties' initial disclosures and/or that all documents must be produced in Northern California as per AIU's document demand.

¹ AIU contends that the parties' failure to produce all claim file documentation together with the initial disclosures violates the Federal Rules of Civil Procedure as well as the spirit of this Court's prior case management order which granted the parties additional time in which to complete a meaningful initial disclosure period. The defendant carriers dispute this contention and contend that they properly completed the initial disclosures. AIU preserved all of its objections with respect to same.

1 Plaintiff contends that until such document review is completed, the parties are unable to
2 obtain complete resolution of all of the issues raised by this matter by either informal resolution or
3 motion practice. The parties are presently meeting and conferring in order to attempt to resolve
4 issues raised by the document production informally. To the extent that the parties are unable to
5 reach informal resolution of the issues, formal motion practice may be required.

6 (c) ADR Efforts

7 In compliance with the Court's order, the parties to this matter submitted to a private
8 mediation session on July 11, 2008. The parties reconvened for further mediation on August 6,
9 2008. The parties used the opportunity to discuss methods of resolving some or all of the present
10 action in order to streamline further litigation.

11 Further settlement discussions will be held through the end of August. To the extent the
12 further discussions are unsuccessful, the parties believe that this matter would be benefited by
13 further private mediation session, once the document exchange and motion practice is completed.

14 (3) Proposals for Continued Action

15 The parties request that the Court schedule a further subsequent case management
16 conference in six months so as to permit the parties to complete the document exchange and
17 review as well as any motion practice necessary to facilitate same. Following the document
18 exchange, the parties anticipate that they will be ready to discuss further case scheduling including
19 motions/cross-motions for summary judgment as well as trial.

20 (4) Potential Motions

21 On July 22, 2008, Arrowood circulated a proposed Stipulation Re: Exhaustion of
22 Arrowood Indemnity Company Policies [Proposed] Order to all parties. If the parties do not
23 stipulate to the exhaustion of Arrowood's policies, then Arrowood likely will file a motion for
24 summary judgment on that and other issues.

25 Once all responses to the pleadings are filed, TIG will file a motion for judgment on the
26 pleadings.

27 AIU, Acceptance, ASRRG, and ASIC anticipate filing a motion or motions, to the extent
28 leave is granted, seeking summary judgment.

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1 DATED: August 7, 2008

MCCURDY & FULLER LLP

2
3 By: /s/ Laura J. Ruettgers
4 LAURA J. RUETTGERS
5 Attorneys for Plaintiff
6 AIU INSURANCE COMPANY

7 DATED: August 7, 2008

LAW OFFICES OF SEMHA ALWAYA

8 By: /s/ Semha Alwaya
9 SEMHA ALWAYA
10 Attorneys for Defendant
11 TIG SPECIALTY INSURANCE COMPANY

12 DATED: August 7, 2008

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13 By: /s/ Mary E. McPherson
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16 Attorneys for Defendant
17 ARROWOOD INDEMNITY COMPANY,
18 F/K/A ROYAL INDEMNITY COMPANY,
19 SUCCESSOR-IN-INTEREST TO ROYAL
20 INSURANCE COMPANY OF AMERICA

21 DATED: August 7, 2008

MARRONE, ROBINSON, FREDERICK &
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22 By: /s/ Thomas Foster
23 THOMAS FOSTER
24 Attorneys for Defendant
25 ACCEPTANCE INSURANCE COMPANY

26 DATED: August 7, 2008

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27 By: /s/ David S. Blau
28 DAVID S. BLAU
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AMERICAN SAFETY RISK RETENTION
GROUP, INC., AMERICAN SAFETY
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